Supreme Court, U.S.
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No.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

Robert B. LeBlanc; Joan S. LeBlanc,

Jointly And Severally,

Petitioners,

v.

WARD LAKE DRILLING, INC.,

Respondent.

Petition for Writ of Certiorari to the

United States Court of Appeals

for the Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

AND

APPENDIX TO PETITION

By: Robert B. LeBlanc, Pro Se

On Behalf of himself and his wife Joan

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QUESTIONS PRESENTED

1) Whether the State descended from its plane of sovereignity upon leasing its mineral rights to WARD LAKE DRILLING, INC..

2) Whether the LeBlancs lost any "certain rights" by duly removing case to Federal court on March 9, 1992.

3) Whether the LeBlancs are entitled to analogous constitutional protections justly afforded in Hickey v. Stewart, 3 How. 750 (1845) under similar circumstances.

4) Whether the Federal courts remain duly obligated by 28 U.S.C. § 1359 to rightfully dismiss WARD LAKE DRILLING, INC.'s case.

THE PARTIES

The petitioners (LeBlancs) are named in the caption. WARD LAKE DRILLING, INC. (Ward Lake) is the respondent as is listed in the caption. The State of Michigan is a "real party in interest" with Ward Lake under Federal Rule of Civil Procedure 17(a). See, infra, at pages 7-12 of the Reasons For Granting The Writ, § I for a justified designation under the circumstances.

TABLE OF CONTENTS

	Page(s)
Questions Presented	i
The Parties	ii
Table of Authorities	v-vi
Introduction	1-2
Opinions Below	2
Jurisdictional Statement	3
Constitutional Provision and Statutes	3-4
Statement Of The Case	
A. The Forfeiture	5
B. The Resurrection of a lease	5-6
C. The Removal to Federal Forum	6
D. The Proceedings	6-7
Reasons For Granting The Writ	
I. The State of Michigan descended from its plane of sovereignity, it is pro hac	

Page(s)

vice a private person, and said State is bound accordingly. 7-12

II. The LeBlancs did not lose their Nineth Amendment rights by duly removing the case to the Federal district court. 12-14

III. The LeBlancs are entitled to similar constitutional protections afforded in precedent of Hickey v. Stewart. 14-16

IV. The National courts remain bound by 28 U.S.C. § 1359's mandate. 16-19

Conclusion 19

TABLE OF AUTHORITIES

Page(s)

Cases Cited

Cramer v. Caribbean Mills, Inc.,
394 U.S. 823 (1969) 17

Dalton v. Spector, ___ U.S. ___
(1994), Slip Opin. at 15 17-16

Davis v. Gray, 83 U.S. 203
(1872) 12-13

Hall v. State of Wisconsin,
103 U.S. 5 (1880) 7-8

Hickey v. Stewart, 3 How. 750
(1845) ..... i,14,15 & 16

Constitution

U.S. Constitution, Amend. 9 ... 3

Rules	Page(s)
Federal Rule of Civil Procedure	
17(a)	ii,12
Statutes	
28 U.S.C. § 1254(1).....	3
28 U.S.C. § 1331	6
28 U.S.C. § 1359	i,3-4,7, 16,17,19
28 U.S.C. § 1441(a)	6,14
28 U.S.C. § 1441(e)	6,14
Michigan Compiled Law (M.C.L.)	
554.281 [P.A. 1929, § 81]	4,5,13, 15,16,18 & 19
Treaties	
Marbury v. Madison and Judicial Review (1989) Robert L. Clinton pp. 19-20 [University Press of Kansas] Blackst. Comm. V.1,91	8-9,10

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PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States of America:

Petitioners, Robert B. LeBlanc; Joan S. LeBlanc (LeBlancs), Jointly and Severally in propria persona, respectfully pray that a Writ of Certiorari issue to review the

Order of the United States Court of Appeals for the Sixth Circuit entered on July 6, 1994 granting Dismissal of the LeBlancs Appeals in favor of WARD LAKE DRILLING,INC. (Ward Lake), and the Order of the United States Court of Appeals for the Sixth Circuit entered on August 25, 1994 denying the LeBlancs Petition for Rehearing.

OPINIONS BELOW

The Order granting Ward Lake's Motion of Dismissal of the LeBlancs Appeals by the United States Court of Appeals for the Sixth Circuit is not officially reported and is reproduced in the appendix herewith at pages 1a - page 4a.

The Order of the United States Court of Appeals for the Sixth Circuit denying the LeBlancs Petition for Rehearing is not officially reported and is reproduced in the appendix herewith at pages 5a - pg. 7a.

JURISDICTIONAL STATEMENT

The Order Dismissing Appeals of the petitioners LeBlanc by the United States Court of Appeals for the Sixth Circuit was entered on July 6, 1994. The Order denying LeBlancs Petition for Rehearing by the United States Court of Appeals for the Sixth Circuit was entered on August 25, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION AND STATUTES

United States Constitution, Amendment 9:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

28 U.S.C. § 1359:

"A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise,

has been improperly or collusively made or joined to invoke the jurisdiction of such court."

Michigan Compiled Laws (M.C.L.) 554.281 [P.A. 1929, Section 81]:

Section 1. ..."If the lessee, his successors or assigns, shall not notify the register of deeds as above provided, then the register of deeds shall record said affidavit and thereupon the <u>said lease shall be null and void and of no legal effect</u>, and thereafter the record of the said lease shall not be notice to the public of the existance of said lease or of any interest therein or rights thereunder, and said record shall not be received in evidence in any court of the state on behalf of the lessee, his successors or assigns against the lessor, his successors or assigns." (Underlined emphasis added.)

STATEMENT OF THE CASE

This case stems from the mandate of M.C.L. 554.281 (oil, gas, or mineral lease "forfeiture" statute) as applied to the rights and duties emanating from its due application to private persons who lease their own oil, gas, or mineral rights to land in the State of Michigan.

A. The "Forfeiture"

Under the express authority of M.C.L. 554.281, on August 5, 1991, the Otsego County Register of Deeds recorded the LeBlancs "affidavit of forfeiture" and thereby extinguishing the mineral lease that had existed prior to August 5, 1991 between Ward Lake and the LeBlancs.

B. The Resurrection of Non-Existant Lease

Some ($6\frac{1}{2}$) months after the August 5, 1991 recording of the LeBlancs "affidavit of forfeiture", Ward Lake commenced a four-

count civil action against the LeBlancs in the Otsego County Circuit Court of Michigan. Ward Lake premised its entire case on the lease that had, on August 5, 1991, become "null and void and of no legal effect."

C. The Removal to the Federal Court Forum

The LeBlancs didnot file any pleadings whatsoever in the State court except for notice of removal on March 9,1992. On March 9, 1992, the LeBlancs removed the case from the State court to the Federal court for the reason that Ward Lake's case presented a Federal Question under 28 U.S.C. § 1331. Removal was made under 28 U.S.C. § § 1441(a) and 1441(e).

D. The Proceedings

The LeBlancs were unsuccessful in persuading the Federal district court as well as the United States Court of Appeals for

the Sixth Circuit that United States Supreme Court case law precedent together with 28 U.S.C. § 1359's application would bring about a justly proper and reasonable disposition of this case.

REASONS FOR GRANTING THE WRIT

I. THE STATE OF MICHIGAN DESCENDED FROM ITS PLANE OF SOVEREIGNITY, IT IS PRO HAC VICE A PRIVATE PERSON, AND SAID STATE IS BOUND ACCORDINGLY.

The State of Michigan entered into a mineral lease agreement with Ward Lake so as to lease said State's certain mineral rights and whereby the LeBlancs own only the surface rights to this certain tract of land. Authority of case law precedent of this Court titled Hall v. State of Wisconsin, 103 U.S. at 11 (1880) provides:

"When a state descends from the plane of its sovereignity, and contracts with private persons, it is regarded pro hac vice as a private person itself, and is bound accordingly. Davis v. Gray, 16 Wall. 203."

Next, as is set forth in Robert L. Clinton's book titled, "Marbury v. Madison and Judicial Review", 1989 [University Press of Kansas], at pages 19-20 citing William Blackstone's 10th Rule of Statutory Construction as applicable to this case:

"Thus if an act of parliment gives a man power to try all causes, that arise within his manor of Dale; yet, if a cause should arise in which he himself is party, the act is construed not to extend to that; because <u>it is unreason-</u>

able that any man should determine his own quarrel." (Underlined emphasis added.)

The LeBlancs contend that the State of Michigan cannot, under the circumstances, transform itself into a chameleon like creature at its whim and caprice by once assuming the status of a private person on the one hand, and then into a sovereign power on the other hand. Specifically, once the State of Michigan entered the marketplace, and contracted by lease agreement with Ward Lake, said State became a private person by law. Further, because the LeBlancs own the surface rights to this tract of land per deed restrictions, therefore, the State of Michigan's relationship with the LeBlancs remains that of a private person. In other words, to let the State of Michigan enjoy

the best of both worlds (private person and sovereign) would contradict Blackstone's longstanding doctrine of unreasonableness.

Thirdly, the State of Michigan receives Royalty payments from its mineral lease agreement with Ward Lake and thereby creating a pecuniary interest and thus a genuine "conflict of interest" between said State and the LeBlancs on this tract of land. This particular tract of land is taxed at the same rates as is land that is owned by neighboring private persons. The significant difference is that the State of Michigan owns the mineral rights, receives Royalties, and full use of this tract of land and the LeBlancs are taxed as if the LeBlancs own the mineral rights. Also, the LeBlancs receive no Royalties from this tract of land, yet, the LeBlancs pay all property

taxes for said land.

Lastly, a pipeline from a contiguous tract of land next to the tract at issue, crosses said tract with the LeBlancs as the surface owners who, by deed restrictions, are justly entitled to receive just compensation from said pipeline's crossing, but, the LeBlancs have not received compensation from either the State of Michigan or from Ward Lake. Again, a "conflict of interest" is clearly present.

Therefore, the relationship between the State of Michigan and the LeBlancs remains that of one constituting a relationship between private persons. The State of Michigan's aforesaid prejudicial "conflicts of interest" prohibited said State's courts and its officers from adjudicating and intervening in this case since the State of

Michigan constituted a "real party in interest" under Federal Rule of Civil Procedure 17(a). Ward Lake remains a private person whom the State of Michigan entered into its mineral rights lease contract.

II. THE LEBLANCS DID NOT LOSE THEIR NINETH AMENDMENT RIGHTS BY DULY REMOVING THE CASE TO THE FEDERAL DISTRICT COURT.

On March 9, 1992, the LeBlancs duly removed the case from the State court to the Federal court primarily because the State of Michigan was a "real party in interest" with Ward Lake on the one hand, and because of the said State's above-said "conflicts of interest" between itself and the LeBlancs. As is stated in the case law titled Davis v. Gray, 83 U.S. at 221 (1872) reads:

"A party by going into National court

does not lose any right or appropriate remedy of which he might have availed himself in the State courts of the same locality. The wise policy of the Constitution gives him a choice of tribunals. In the former he may hope to escape the local influences which sometimes disturb the even flow of justice."

Next, the statutory language of M.C.L. 554.281 expressly bars the resurrection of a non-existant lease after an "affidavit of forfeiture" is recorded as was duly recorded on August 5, 1991. The LeBlancs for good reasons were justified in removing the case to the Federal court in their own good faith efforts to receive an impartial and a just adjudication of the case.

Therefore, under authority of law and of

circumstances, the only reasonable recourse to be had by the LeBlancs was to be found solely in the Federal court, and accordingly, the case was timely removed under the authority of 28 U.S.C. §§ 1441(a) and 1441 (e). Section 1441(e) provides:

> "The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim."

III. THE LEBLANCS ARE ENTITLED TO SIMILAR CONSTITUTIONAL PROTECTIONS AFFORDED IN PRECEDENT OF HICKEY V. STEWART.

In the case law of Hickey v. Stewart, 3 How. at 760-761 (1845) many similarities

can be easily found when compared with the situation presented by the LeBlancs, e.g., compare the language of M.C.L. 554.281, supra, with the following holding of the Court in Hickey, supra:

> 'And upon the failure of the claimant to comply with these requirements, his claim is declared to be void, and shall never "be received or admitted as evidence in any court in the United States against any grant derived from the United States".' (Underlined emphasis added.)

Just as Ward Lake failed to notify the Otsego County Register of Deeds within the alloted time, so too did Stewart fail to notify the Land-office. Even more similar is the fact that Ward Lake attempted to challenge the "forfeiture" in the State

and Federal courts similar to what Stewart had attempted. Ultimately, the mandate of an Act of Congress was recognized as such in Hickey v. Stewart, and so too should M.C.L. 554.281 be recognized as a mandate and given due consequence, i.e., unable to be disturbed by judicial activism in any other similar circumstances.

In conclusion, the Federal district court as well as the United States Court of Appeals for the Sixth Circuit clearly failed to treat M.C.L. 554.281 with the same due deference as the United States Supreme Court has shown towards Acts of Congress.

IV. THE NATIONAL COURTS REMAIN OBLIGATED BY 28 U.S.C. § 1359'S MANDATE.

The Federal district court together with the United States Court of Appeals for the

Sixth Circuit grossly errored by permitting Ward Lake the opportunity to "resurrect a non-existant lease". As is aptly stated in case law titled Cramer v. Caribbean Mills, Inc., 394 U.S. at 829 (1969):

> 'Such "manufacture of Federal Jurisdiction" was the very thing which Congress intended to prevent when it enacted § 1359 and its predecessors.'

The Federal district court together with the United States Court of Appeals for the Sixth Circuit have continuiously ignored this Court's case law precedents as well as a particular Act of Congress, namely 28 U.S.C. § 1359. Direction is shown in a recently decided case titled Dalton v. Spector, ___ U.S. ___ (1994) Slip Opinion at page 15 provides a longstanding rule of law for all Federal courts as follows:

"[O]ur conclusion that judicial review is not available for respondents' claim follows from our interpretation of an Act of Congress, by which we and all federal courts are bound. The judicial power of the United States conferred by Article III of the Constitution is upheld just as surely by withholding judicial relief where Congress has permissibly foreclosed it, as it is by granting such relief where authorized by the Constitution or by statute. (Underlined emphasis added.)

Surely, M.C.L. 554.281 bars Ward Lake's unauthorized representations and its veiled attempts to resurrect a non-existant lease. After the case was properly removed to the Federal court by the LeBlancs on March 9, 1992, Ward Lake's case warranted immediate

dismissal under authority of 28 U.S.C. § 1359 because Ward Lake's civil action had been manufactured by improperly and collusively making itself a party by attempting to circumvent the mandate of the Michigan Legislature, i.e., M.C.L. 554.281.

CONCLUSION

For the reasons stated, the LeBlancs do respectfully request the Court to grant a Writ of Certiorari to review.

Respectfully submitted,

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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INDEX TO APPENDICES

Page(s)

APPENDIX A

Order on Ward Lake's Motion to Dismiss LeBlancs Appeals, United States Court of Appeals for the Sixth Circuit, July 6, 1994 (Nos. 94-1227/1273) 1a-4a

APPENDIX B

Order denying LeBlancs Petition For Rehearing, United States Court of Appeals for the Sixth Circuit, August 25, 1994 (Nos. 94-1227/1273) 5a-7a

Salutation 7a

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Nos. 94-1227/1273

WARD LAKE DRILLING, INCORPORATED,

Plaintiff-Appellee,

v.

ROBERT B. LEBLANC; JOAN S. LEBLANC,

Jointly and Severally,

Defendants-Appellants.

BEFORE: JONES and RYAN, Circuit Judges;

and KRUPANSKY, Senior Circuit Judge.

ORDER of July 6, 1994

This matter is before the court upon appellants' motion to address the resurrection of a nonexistant lease, the appellee's motion to dismiss the appeal for lack of jurisdiction and the responses to such motions.

Ward Lake Drilling, Inc. (Ward Lake), filed a complaint in state court containing four counts consisting of action to quiet title, declaratory judgment, breach of contract and unjust enrichment. On behalf of himself and his wife, Robert LeBlanc (LeBlanc) removed the action to federal court alleging that the declaratory judgment count presented a claim that a Michigan statute violated the Fourteenth Amendment. The district court accepted jurisdiction as to the declaratory judgment count and remanded the remaining state law claims back to state court. LeBlanc filed notices of appeal and this court dismissed the appeals for lack of jurisdiction (appeal No. 92-2234 and 92-2324). The state court granted a motion for summary disposition filed by Ward Lake. Accordingly, Ward Lake filed a motion in the [Federal] district court on January 14, 1994, to voluntarily dismiss the case on the basis of mootness. LeBlanc failed to concur in the motion to dismiss but did not file a response. By order filed February 3, 1994, the district court determined that the LeBlanc defen-

dants would not be prejudiced by a dismissal and the court granted the motion to voluntarily dismiss the case. LeBlanc filed motions to vacate or reconsider which were denied by order entered February 17, 1994. Robert LeBlanc filed notices of appeal on February 22 and March 8, 1994, on behalf of himself and his wife (appeal Nos. 94-1227 and 94-1273).

Initially, it should be noted that Robert LeBlanc has filed documents in this court and the [Federal] district court on behalf of himself and his wife. Parties may plead and conduct their own cases personally or by counsel as provided by 28 U.S.C. § 1654. Robert LeBlanc cannot represent his wife because he is not an attorney. See Lewis v. Lenc-Smith Mfg. Co., 784 F.2d 829, 830-31 (7th Cir. 1986)(per curiam). Accordingly, Robert LeBlanc is the only appellant in these appeals.

Ward Lake was granted a judgment in the state court and, accordingly, its argument in the federal court that a Michigan statute was unconstitutional as it applied to the particular facts of the case

became moot. It therefore sought and was granted voluntary dismissal. A matter of confusion is LeBlanc's consistant arguments that the federal court lacks jurisdiction; however, he was the one that removed the matter from the state court and seeks review of the [Federal] district court's voluntary dismissal by this court. The argument by Ward Lake that a Michigan statute was unconstitutional is moot. LeBlanc is not aggrieved by the [Federal] district court's dismissal and lacks standing to appeal. See Native Village of Tyonek v. Puckett, 957 F.2d 631, 633 (9th Cir. 1992) (order); Rafoth v. National Union Fire Ins. Co. (In re Baker & Getty Fin. Servs.), 954 F.2d 1169, 1174 (6th Cir. 1992).

Accordingly, it is ORDERED that the motion to dismiss is granted and the appeals are dismissed. Rule 8(a), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT on July 6, 1994.

Leonard Green, Clerk of the Court; 6th Circuit

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Nos. 94-1227/1273

WARD LAKE DRILLING, INCORPORATED,

Plaintiff-Appellee,

v.

ROBERT B. LEBLANC; JOAN S. LEBLANC,

Jointly and Severally,

Defendants-Appellants.

BEFORE: JONES and RYAN, Circuit Judges;

and KRUPANSKY, Senior Circuit Judge.

ORDER of August 25, 1994

This matter is before the court upon consideration of the petition for rehearing of this court's July 6, 1994,[order] which dismissed the appeal as moot. In the petition for rehearing, Robert LeBlanc

argues that he is permitted to represent his wife on appeal, that the case should be reheard and the issue of constitutionality of M.C.L. 554.281 certified to the Supreme Court, and, that if rehearing is denied, that the mandate be stayed for a period of at least 90 days.

A party can plead and conduct a case either pro se or be represented by an attorney pursuant to 28 U.S.C. § 1654. Case law has used this statute to prohibit a nonattorney from representing a person, even if that person is a spouse. Bonacci v. Kindt, 868 F.2d 1442, 1443 (5th Cir. 1989); Lewis v. Lenc-Smith Mfg. Co., 784 F.2d 829, 830-31 (7th Cir.1986) (per curiam); Herrera-Vanegas v. Sanchez-Rivera, 681 F.2d 41, 42 (1st Cir. 1982)(per curiam); Lindstrom v. Illinois, 632 F. Supp. 1535, 1537 (N. D. Ill. 1986). Although this statute [§ 1654] has not been amended, Fed. R. App. P. 3(c) was recently amended. Rule 3(c) now allows a pro se litigant to file a notice of appeal on behalf of himself and his spouse. Therefore, the notice of appeal filed

by Robert LeBlanc on behalf of himself and his wife was sufficient to make Joan S. LeBlanc an appellant to this appeal.

After careful consideration, the panel concludes that it acted under no misapprehension of law or fact in issuing its July 6, 1994, order dismissing the appeal as moot. Fed. R. App. P. 40(a).

Accordingly, the petition for rehearing is denied. The mandate of this court is stayed for 30 days pursuant to Fed. R. App. P. 41(b).

ENTERED BY ORDER OF THE COURT on August 25, 1994.

Leonard Green, Clerk of the Court; 6th Circuit

==========

Respectfully submitted,

By: Robert B. LeBlanc, Pro Se

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